

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIRK WALTER TICHGELAAR,

Defendant.

Case No. CR21-114RSL

ORDER OF RESTITUTION

This matter comes before the Court on “Defendant’s Restitution Memorandum” (Dkt. # 55) and the Government’s “Memorandum Regarding Restitution” (Dkt. # 56). Having reviewed these motions, the Government’s sealed exhibits (Dkt. # 58), and the record in this case, the Court hereby issues this order regarding restitution.

On July 29, 2021, defendant pleaded guilty to (1) possession of child pornography in violation of 18 U.S.C. § 2252(a)(5)(B) in Case. No. CR21-114RSL and (2) enticement of a minor in violation of 18 U.S.C. § 2422(b) in Case. No. CR21-115RSL. Dkt. # 6. On March 14, 2024, defendant was sentenced to 120 months for possession of child pornography and 180 months for enticement of a minor, with the sentences to run consecutively. Dkt. # 48 (Case. No. CR21-114RSL); Dkt. # 81 (Case. No. CR21-115RSL). The Government now seeks a total of

1 \$47,000 in restitution to nine victims of defendant's possession of child pornography, pursuant
2 to 18 U.S.C. § 2259.
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4 The Court must engage in a three-step process when determining restitution after a
5 defendant is convicted of trafficking in child pornography. 18 U.S.C. § 2259(b)(2), (c)(3). The
6 first step is determining the full amount of each victim's losses. 18 U.S.C. § 2259(b)(2)(A).
7 Here, the defendant does not contest the loss amounts put forward by the Government. Dkt.
8 # 55 at 2. Therefore, the Court accepts the Government's contentions regarding those loss
9 amounts. Dkt. # 56 at 2.
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11 The second step is determining a restitution amount for each victim that "reflects the
12 defendant's relative role in the causal process that underlies the victim's losses." 18 U.S.C.
13 § 2259(b)(2)(B). That amount may not be less than \$3,000 for each victim. *Id.* In determining a
14 defendant's "relative role in the causal process that underlies the victim's losses," the Court may
15 consider certain factors. *Paroline v. United States*, 572 U.S. 434, 460 (2014). Some of those
16 factors relate to the defendant's role in producing and distributing images of child pornography.
17 *Id.* Other factors require the Court to speculate as to the number of future offenders likely to
18 contribute to each victim's losses, and to determine the overall number of offenders already
19 involved in the victim's total losses. *United States v. Hoffman*, No. 2:22-CR-00018-TL, 2022
20 WL 4017890, at *6 (W.D. Wash. Sept. 2, 2022). In cases like this one, where the defendant
21 possessed and undoubtedly consumed the images at issue "but did not produce or distribute
22 them," the speculative factors can end up carrying more weight, making it difficult for the Court
23 to use the *Paroline* factors without engaging in "the prohibited practice of 'arbitrary
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1 calculations.” *Id.* (Citing *United States v. Kennedy*, 643 F.3d 1251, 1261 (9th Cir. 2011)).
2 Victims have pointed out that they are in no better position to engage in speculation regarding
3 fundamentally “unknowable” things like the number of un-apprehended people who now
4 possess or in the past might have possessed a victim’s image. *Id.* See also Dkt. # 58. As the
5 Government explains, “Unfortunately, many of the *Paroline* factors depend on estimates that the
6 government and the claimants would be hard pressed to calculate.” Dkt. # 56 at 5.
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9 Here, the Court has been provided information responsive to the *Paroline* factor that
10 considers “how many images of the victim defendant possessed.” Dkt. # 56 at 2; *Paroline*, 572
11 U.S. 434 at 460 (2014). The Government and claimants have made efforts to calculate “the
12 defendant’s share of their loss based primarily on the number and type of files he possessed.”
13 Dkt. # 56 at 5. The Court has reviewed the sealed exhibits that support the victims’ calculations
14 of their total losses, and in a few cases these exhibits provide information relevant to the
15 *Paroline* factor that considers “the number of past criminal defendants found to have contributed
16 to the victim’s general losses.” Dkt. # 58; *Paroline*, 572 U.S. 434 at 460 (2014). However, in all
17 cases other questions raised by the *Paroline* factors remain unanswered here, making it difficult
18 to determine defendant’s “relative role” in each of the nine victims’ total losses (even while
19 acknowledging that calculating restitution “cannot be a precise mathematical inquiry”).
20 *Paroline*, 572 U.S. 434 at 459 (2014). See also *Hoffman*, No. 2:22-CR-00018-TL, 2022 WL
21 4017890, at *7 (W.D. Wash. Sept. 2, 2022) (stating, in similar circumstances, that where the
22 court lacked “sufficient information regarding the relative causal significance of [the
23 defendant’s] conduct in producing the losses of his victims, the Court has no choice but to award
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1 only the statutory minimum for each victim.”). Therefore, because this Court does not have
2 sufficient information to determine the relative causal significance of defendant’s actions in
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4 producing the losses of any of the nine victims, it awards each victim \$3,000 in restitution. In
5 doing so, the Court notes that while defendant’s crimes undoubtedly deserve an order of
6 restitution, defendant is presently serving a 25-year term, is “likely to spend the rest of his life in
7
8 prison,” and has an “extremely limited” ability to make restitution payments. Dkt. # 55 at 6.

9 The final step the Court must take when determining restitution amounts is to assure that
10 the victims, who may be receiving restitution from numerous other defendants, do not, as a
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12 result of this Court’s restitution order, end up receiving restitution that exceeds their total
13 amount of demonstrated losses. 18 U.S.C. § 2259(b)(2)(C). Here, none of the nine victims will
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15 exceed their demonstrated losses by receiving \$3,000 from this defendant. Dkt. # 56 at 2.

16 For all the foregoing reasons, the court ORDERS defendant to pay \$3,000 restitution to
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18 each of the nine victims identified by the Government. Dkt. # 56 at 2.

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20 DATED this 8th day of October, 2024.

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23 Robert S. Lasnik
24 United States District Judge